



Comptroller General  
of the United States

Washington, D.C. 20548

*Mr. White*

## Decision

**Matter of:** Stay, Inc.  
**File:** B-237073  
**Date:** December 22, 1989

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### DIGEST

1. Contention that bid bond was defective because it was executed by corporate surety not licensed to do business in state where contract is to be performed is denied since there is no requirement in Treasury Department Circular 570, which prescribes qualifications for corporate sureties, that surety be licensed in state of performance, and prospective awardee's surety in fact was licensed in the state where the bond was executed, as required by the Treasury Circular.
2. Allegation that Treasury Department Circular 570 improperly permits acceptance of corporate sureties not licensed in state of contract performance involves challenge to alleged solicitation impropriety and therefore is untimely when not filed prior to bid opening, and in any event, presents issue for the Treasury Department or the courts, not this Office, to decide.

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### DECISION

Stay, Inc., protests the award of a contract to American Mutual Protective Bureau (AMPB) under invitation for bids (IFB) No. MDA946-89-C-0041, issued by the Real Estate and Facilities Directorate, Washington Headquarters Services (WHS), Department of Defense, for security guard services at the Army Materiel Command Building in Alexandria, Virginia. Stay argues that AMPB submitted a nonresponsive bid because the required bid bond was prepared by a corporate surety not listed in Treasury Department Circular 570 as licensed in Virginia, where the contract is to be performed. Stay also argues that the Treasury Circular improperly permits acceptance of bonds prepared by sureties not listed as licensed in the jurisdiction where the contract is to be performed.

We deny the protest.

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Paragraph L.2 of the IFB requires each bidder to provide a bid guarantee in an amount equal to 20 percent of the total 12-month period bid price or \$3 million, whichever is less, and requires that such bid guarantees be executed on a Standard Form (SF) 24, Bid Bond, found at pages L-11 through L-12 of the IFB. The instructions for completing SF 24, printed on the face of the form, provide that "[c]orporations executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limits set forth therein." See also Federal Acquisition Regulation (FAR) § 28.202-1(a)(1). This list of approved sureties, Treasury Department Circular 570,<sup>1/</sup> states at note (c) that a surety must be licensed in the state in which it provides a bond, but need not be licensed in the state where the contract is to be performed.

At bid opening on June 20, 1989, seven bids were received. The apparent low bidder was H&H Service Corporation, while the apparent second and third low bidders were AMPB and Stay, respectively. Stay filed a protest with the agency against award to either H&H or AMPB. Stay argued that H&H was not a responsible bidder, and that the bid bond submitted with H&H's bid failed to meet the requirements for bid bonds executed by individual sureties. Stay argued that AMPB's bid was nonresponsive because the corporate surety executing AMPB's bid bond, Merchants Bonding Company, is not listed in the Treasury Circular as licensed in Virginia, where the contract will be performed. By letter dated September 12, WHS determined that the H&H bid was nonresponsive, but rejected Stay's challenge to the responsiveness of AMPB's bid. On September 25, Stay filed a protest with our Office against further consideration of AMPB's bid.

Stay contends that WHS improperly accepted AMPB's bid bond because AMPB's surety was not listed in the Treasury Circular as licensed in the jurisdiction where the contract was to be performed, the Commonwealth of Virginia. Stay further argues that the Treasury Circular improperly permits acceptance of corporate sureties not licensed in the state where the contract is to be performed.

A bid is responsive as submitted when it offers to perform without exception the exact thing called for in the IFB, and acceptance of the bid will bind the contractor to perform in

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<sup>1/</sup> The Treasury Circular is published annually and is formally titled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies."

accordance with all the IFB's material terms and conditions. Contract Servs. Co., Inc., B-226780.3, Sept. 17, 1987, 87-2 CPD ¶ 263. When a required bid bond is found to be proper on its face, the bid is responsive. Id. Where a corporate surety is designated, a bid bond is proper "on its face" when it has been duly executed by the surety's agent, the surety appears on the Treasury Circular list of acceptable sureties, and the surety agrees to be obligated for the penal amount of the bond. See Siska Constr. Co., Inc., B-218428, June 11, 1985, 85-1 CPD ¶ 669, aff'd, B-218428.2, July 29, 1985, 85-2 CPD ¶ 102.

Here, WHS determined that AMPB's bid bond, executed by Merchants Bonding Company, was acceptable because it was properly executed; was for the correct amount of the bond; met all required formalities; and because Merchants Bonding Company appears on the Treasury Circular list of acceptable sureties. We agree. The Treasury Circular provision is clear on its face; it permits acceptance of bid bonds executed by corporate sureties not listed as licensed in the jurisdiction where the contract is to be performed, provided the surety is licensed in the jurisdiction where the bond is executed. The bid bond submitted by Merchants Bonding Company complied with the Treasury Circular; the bond was provided in California, one of the 16 states where the company is licensed as a surety. The fact that the bond applies to work to be performed in Virginia, where Merchants Bonding Company is not licensed as a surety, is immaterial. Accordingly, the contracting officer reasonably determined that AMPB's bid bond was acceptable, and hence that its bid was responsive. See Siska Constr. Co., Inc., B-218428.2, supra.

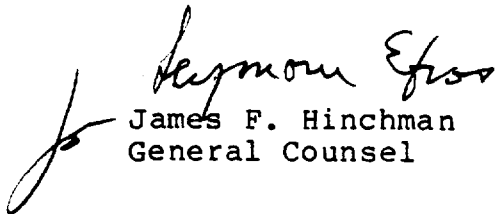
To the extent that Stay contends that the Treasury Circular itself improperly permits acceptance of bid bonds executed by corporate sureties not licensed in the state where a contract is to be performed, we decline to consider the matter.

Initially we note that the protest is untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989), protests based upon alleged solicitation improprieties which are apparent on the face of the solicitation must be filed prior to bid opening. The purpose of this requirement is to enable the contracting agency or our Office to decide issues while it is practicable to take effective action where appropriate. GM Plastics, Inc., B-235083, Apr. 24, 1989, 89-1 CPD ¶ 405. Here, the IFB specifically set out the requirement at FAR § 28.202-1(a)(1) that corporate sureties appear on the Treasury Circular. Stay thus was on actual notice that the requirements for an acceptable corporate

surety were defined by the Treasury Circular, which is published in the Federal Register. Accordingly, Stay was required to file its protest challenging the contents of the Circular before bid opening; since it was not filed until well after that date, the protest on this ground is untimely.

Regardless of the timeliness of Stay's protest, we think it is inappropriate for us to consider Stay's argument. The Secretary of the Treasury is required by statute to authorize corporations to provide surety bonds to the United States Government. See 31 U.S.C. §§ 9304-9308 (1989). Stay argues that the Treasury Department's rules for administering this statutorily-mandated requirement violate the authorizing statute and the U.S. Constitution. We decline to consider Stay's challenge to the Treasury Circular; the issue is a matter for the Treasury Department or the courts to decide, not our Office. See Seyforth Roofing Co., Inc., B-235703, June 19, 1989, 89-1 CPD ¶ 574.

The protest is denied in part and dismissed in part. We also deny the protester's request for reimbursement of its protest costs.

  
James F. Hinchman  
General Counsel